

MODIFICATIONS TO THE PROPOSED REGULATION ORDER – COMPLETE TEXT MADE AVAILABLE FOR SUPPLEMENTAL COMMENT

Proposed Extension of the California Standards For Motor Vehicle Diesel Fuel to Diesel Fuel Used For Intrastate Diesel-Electric Locomotives and Harborcraft

Note: The proposed regulatory action consists of the addition of new section 2299, title 13, California Code of Regulations (CCR), and new section 93116, title 17, CCR, along with amendments to sections 2281, 2282, and 2284, title 13, CCR. The originally proposed amendments are shown in underline to indicate additions and ~~strikeout~~ to indicate deletions. The modifications to the original proposal are shown in double-underline to indicate additions and ~~double-strikeout~~ to indicate deletions. The only modifications are the addition of subsections (a)(3) in section 2299, title 13, CCR, and section 93116, title 17, CCR.

1. Add Section 2299, title 13, California Code of Regulations, to read as follows:

California Code of Regulations, Title 13, Division 3 Chapter 5.1. Standards for Fuels for Nonvehicular Sources

§ 2299. Standards for Nonvehicular Diesel Fuel Used in Diesel-Electric Intrastate Locomotives and Harborcraft.

(a) Requirements.

(1) Standards for Nonvehicular Diesel Fuel Used in Harborcraft in the South Coast Air Quality Management District (SCAQMD) Beginning January 1, 2006. Beginning January 1, 2006, California nonvehicular diesel fuel sold, offered for sale, or supplied within the SCAQMD for use in harborcraft is subject to all of the requirements of Title 13 CCR sections 2281 (sulfur content), 2282 (aromatic hydrocarbons content) and 2284 (lubricity) applicable to vehicular diesel fuel, and shall be treated under those sections as if it were vehicular diesel fuel.

(2) Standards for Nonvehicular Diesel Fuel Used in Intrastate Diesel-Electric Locomotives and Harborcraft Beginning January 1, 2007. Beginning January 1, 2007, California nonvehicular diesel fuel sold, offered for sale, or supplied for use in diesel-electric intrastate locomotives or harborcraft is subject to all of the requirements of title 13 CCR sections 2281 (sulfur content), 2282 (aromatic hydrocarbons content) and 2284 (lubricity) applicable to vehicular diesel fuel, and shall be treated under those sections as if it were vehicular diesel fuel.

(3) Exemption for military specification fuel used in military vessels. The requirements of this section do not apply to military specification fuel that is sold, offered for sale, or supplied for use in marine vessels owned or operated by the armed forces of the United States.

(b) Definitions.

(1) "California nonvehicular diesel fuel" means any diesel fuel that is not vehicular diesel fuel as defined respectively in Title 13 sections 2281(b), 2282(b), or 2284(b) and that is sold or made available for use in engines in California.

(2) "Diesel-electric locomotive" means a locomotive using electric power provided by a diesel engine that drives a generator or alternator; the electrical power produced then drives the wheels using electric motors.

(3) "Diesel fuel" means any fuel that is commonly or commercially known, sold or represented as diesel fuel, including any mixture of primarily liquid hydrocarbons that is sold or represented as suitable for use in an internal combustion, compression-ignition engine.

(4) "Harborcraft" means any marine vessel that meets all of the following criteria:

(A) The vessel does not carry a "registry" (foreign trade) endorsement on its United States Coast Guard certificate of documentation, and is not registered under the flag of a country other than the United States;

(B) The vessel is less than 400 feet in length overall (LOA) as defined in 50 CFR § 679.2 as adopted June 19, 1996;

(C) The vessel is less than 10,000 gross tons (GT ITC) per the convention measurement (international system) as defined in 46 CFR 69.51 - .61, as adopted September 12, 1989; and

(D) The vessel is propelled by a marine diesel engine with a per-cylinder displacement of less than 30 liters.

(5) "Intrastate diesel-electric locomotive" means:

(A) A diesel-electric locomotive that operates within California for which at least 90 percent of its annual fuel consumption, annual hours of operation, and annual rail miles traveled occur within California. This definition would typically include, but not be limited to, diesel-electric locomotives used in the following operations: passenger intercity and commuter, short haul, short line, switch, industrial, port, and terminal operations;

(B) An intrastate diesel-electric locomotive does not include those diesel-electric locomotives that:

1. Meet the U.S. Environmental Protection Agency Tier II locomotive emission standards, and;
2. Primarily move freight into and out of the South Coast Air Quality Management District, and;
3. Has been included as a diesel-electric locomotive operating in the South Coast Nonattainment Area under paragraph IV.b. of the Memorandum of Mutual Understandings and Agreements for the South Coast Locomotive Fleet Average Emissions Program, dated July 2, 1998.

(C) (This subsection reserved for consideration of diesel-electric locomotives that meet the U.S. Environmental Protection Agency Tier II locomotive emission standards and primarily move freight within California outside of the South Coast Air Quality Management District.)

(6) “Locomotive” means a piece of on-track equipment designed for moving or propelling cars that are designed to carry freight, passengers or other equipment, but which itself is not designed or intended to carry freight, passengers (other than those operating the locomotive) or other equipment.

(7) “Marine vessel” means any ship, boat, watercraft, or other artificial contrivance used as a means of transportation on water.

(c) *Alternative Emission Reduction Plan for Intrastate Diesel-Electric Locomotives.* For an owner or operator of an intrastate diesel-electric locomotive who has submitted an alternative emission reduction plan (plan) that contains a substitute fuel(s) and/or emission control strategy(s) and has been approved by the Executive Officer, compliance with the alternative emission reduction plan (plan) shall constitute compliance with the requirements of subsection (a)(2). In order to be approved, the plan must do all of the following:

(1) Identify or define the total fuel consumption and total emissions that would be associated with the activities of the diesel-electric locomotives were the owner or operator to comply with subsection (a)(2);

(2) Define a substitute fuel(s) and/or emission control strategy(s) for the plan.

(3) Identify the emission reductions that are attributable to the substitute fuel(s) and/or emission control strategy(s) relative to the emission reductions achieved through compliance with subsection (a)(2).

(4) Demonstrate that the substitute fuel(s) and/or emission control strategy(s) in the plan provide equivalent or better emission benefits than would be achieved through compliance with subsection (a)(2). The emission benefits achieved under the plan shall

be targeted towards residents in those parts of the state most impacted by diesel-electric locomotive emissions.

(5) The plan shall contain adequate enforcement provisions.

NOTE: Authority cited: Sections 39600, 39601, 43013 and 43018 of the Health and Safety Code, and Western Oil and Gas Ass'n. v. Orange County Air Pollution Control District, 14 Cal. 3d 411, 121 Cal. Rptr. 249 (1975). Reference: Sections 39000, 39001, 39515, 39516, 41511, 43013, 43016 and 43018, Health and Safety Code, and Western Oil and Gas Ass'n. v. Orange County Air Pollution Control District, 14 Cal. 3d 411, 121 Cal. Rptr. 249 (1975).

2. Add new section 93116, title 17, California Code of Regulations, to read as follows:

§ 93116. Airborne Toxic Control Measure to Reduce Particulate Emissions from Diesel-Fueled Engines – Standards for Nonvehicular Diesel Fuel used in Intrastate Diesel-Electric Locomotives and Harbor craft.

(a) Requirements.

(1) Standards for Nonvehicular Diesel Fuel Used in Harborcraft in the South Coast Air Quality Management District (SCAQMD) Beginning January 1, 2006. Beginning January 1, 2006, California nonvehicular diesel fuel sold, offered for sale, or supplied within the SCAQMD for use in harborcraft is subject to all of the requirements of Title 13 CCR sections 2281 (sulfur content), 2282 (aromatic hydrocarbons content) and 2284 (lubricity) applicable to vehicular diesel fuel, and shall be treated under those sections as if it were vehicular diesel fuel.

(2) Standards for Nonvehicular Diesel Fuel Used in Intrastate Diesel-Electric Locomotives and Harborcraft Beginning January 1, 2007. Beginning January 1, 2007, California nonvehicular diesel fuel sold, offered for sale, or supplied for use in diesel-electric intrastate locomotives or harborcraft is subject to all of the requirements of title 13 CCR sections 2281 (sulfur content), 2282 (aromatic hydrocarbons content) and 2284 (lubricity) applicable to vehicular diesel fuel, and shall be treated under those sections as if it were vehicular diesel fuel.

(3) Exemption for military specification fuel used in military vessels. The requirements of this section do not apply to military specification fuel that is sold, offered for sale, or supplied for use in marine vessels owned or operated by the armed forces of the United States.

(b) Definitions.

(1) "California nonvehicular diesel fuel" means any diesel fuel that is not vehicular diesel fuel as defined respectively in Title 13 sections 2281(b), 2282(b), or 2284(b) and that is sold or made available for use in engines in California.

(2) “Diesel-electric locomotive” means a locomotive using electric power provided by a diesel engine that drives a generator or alternator; the electrical power produced then drives the wheels using electric motors.

(3) “Diesel fuel” means any fuel that is commonly or commercially known, sold or represented as diesel fuel, including any mixture of primarily liquid hydrocarbons that is sold or represented as suitable for use in an internal combustion, compression-ignition engine.

(4) “Harbor craft” means any marine vessel that meets all of the following criteria:

(A) The vessel does not carry a “registry” (foreign trade) endorsement on its United States Coast Guard certificate of documentation, and is not registered under the flag of a country other than the United States;

(B) The vessel is less than 400 feet in length overall (LOA) as defined in 50 CFR § 679.2 as adopted June 19, 1996;

(C) The vessel is less than 10,000 gross tons (GT ITC) per the convention measurement (international system) as defined in 46 CFR 69.51 - .61, as adopted September 12, 1989; and

(E) The vessel is propelled by a marine diesel engine with a per-cylinder displacement of less than 30 liters.

(5) “Intrastate diesel-electric locomotive” means:

(A) A diesel-electric locomotive that operates within California for which at least 90 percent of its annual fuel consumption, annual hours of operation, and annual rail miles traveled occur within California. This definition would typically include, but not be limited to, diesel-electric locomotives used in the following operations: passenger intercity and commuter, short haul, short line, switch, industrial, port, and terminal operations;

(B) An intrastate diesel-electric locomotive does not include those diesel-electric locomotives that:

1. Meet the U.S. Environmental Protection Agency Tier II locomotive emission standards, and;

2. Primarily move freight into and out of the South Coast Air Quality Management District, and;

3. Has been included as a diesel-electric locomotive operating in the South Coast Nonattainment Area under paragraph IV.b. of the Memorandum of Mutual Understandings and Agreements for the South Coast Locomotive Fleet Average

Emissions Program, dated July 2, 1998.

(C) (This subsection reserved for consideration of diesel-electric locomotives that meet the U.S. Environmental Protection Agency Tier II locomotive emission standards and primarily move freight within California outside of the South Coast Air Quality Management District.)

(6) "Locomotive" means a piece of on-track equipment designed for moving or propelling cars that are designed to carry freight, passengers or other equipment, but which itself is not designed or intended to carry freight, passengers (other than those operating the locomotive) or other equipment.

(7) "Marine vessel" means any ship, boat, watercraft, or other artificial contrivance used as a means of transportation on water.

(c) *Alternative Emission Reduction Plan for Intrastate Diesel-Electric Locomotives.* For an owner or operator of an intrastate diesel-electric locomotive who has submitted an alternative emission reduction plan (plan) that contains a substitute fuel(s) and/or emission control strategy(s) and has been approved by the Executive Officer, compliance with the alternative emission reduction plan (plan) shall constitute compliance with the requirements of subsection (a)(2). In order to be approved, the plan must do all of the following:

(1) Identify or define the total fuel consumption and total emissions that would be associated with the activities of the diesel-electric locomotives were the owner or operator to comply with subsection (a)(2).

(2) Define a substitute fuel(s) and/or emission control strategy(s) for the plan.

(3) Identify the emission reductions that are attributable to the substitute fuel(s) and/or emission control strategy(s) relative to the emission reductions achieved through compliance with subsection (a)(2).

(4) Demonstrate that the substitute fuel(s) and/or emission control strategy(s) in the plan provide equivalent or better emission benefits than would be achieved through compliance with subsection (a)(2). The emission benefits achieved under the plan shall be targeted towards residents in those parts of the state most impacted by diesel-electric locomotive emissions.

(5) The plan shall contain adequate enforcement provisions.

Note: Authority cited: Sections 39600, 39601, 39650, 39658, 39659, 39666, and 41511, Health and Safety Code. Reference: Sections 39650, 39658, 39659, 39666, and 41511, Health and Safety Code.

3. Amend section 2281, title 13, California Code of Regulations, to read as follows:

§ 2281. Sulfur Content of Diesel Fuel

(a) Regulatory Standard.

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(5) Applicability of standards to California nonvehicular diesel fuel.

(A) Activities involving California nonvehicular diesel fuel (other than diesel fuel offered, sold or supplied solely for use in locomotives or marine vessels) are also subject to this section to the extent required by section 93114, title 17, California Code of Regulations. As adopted, section 93114 requires each air pollution control or air quality management district by December 12, 2004, to treat this section 2281 as applying to California nonvehicular diesel fuel (other than diesel fuel offered, sold or supplied solely for use in locomotives or marine vessels) as if it were vehicular diesel fuel, and to enforce those requirements regarding California nonvehicular diesel fuel, unless the district has proposed its own airborne toxic control measure to reduce particulate emissions from diesel-fueled engines through standards for nonvehicular diesel fuel.

(B) Activities involving California nonvehicular diesel fuel used in harborcraft and most diesel-electric intrastate locomotives are also subject to this section 2281 as if the fuel were vehicular diesel fuel, to the extent required by section 2299, title 13, California Code of Regulations, and section 93116, title 17, California Code of Regulations. As adopted, these regulations make nonvehicular diesel fuel used in harborcraft in the South Coast Air Quality Management District subject to the requirements of this section 2281 starting January 1, 2006, and make all California nonvehicular diesel fuel used in harborcraft and most diesel-electric intrastate locomotives subject to this section 2281 starting January 1, 2007.

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NOTE: Authority cited: Sections 39600, 39601, 39667, 43013, 43018, and 43101 of the Health and Safety Code, and *Western Oil and Gas Ass'n. v. Orange County Air Pollution Control District*, 14 Cal. 3d 411, 121 Cal. Rptr. 249 (1975). Reference: Sections 39000, 39001, 39002, 39003, 39500, 39515, 39516, 39667, 41511, 43000, 43016, 43018, and 43101, Health and Safety Code, and *Western Oil and Gas Ass'n. v. Orange County Air Pollution Control District*, 14 Cal. 3d 411, 121 Cal. Rptr. 249 (1975).

4. Amend section 2281, title 13, California Code of Regulations, to read as follows:

§ 2282. Aromatic Hydrocarbon Content of Diesel Fuel

(a) Regulatory Standard.

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(3) *Applicability of standards to California nonvehicular diesel fuel.*

(A) Activities involving California nonvehicular diesel fuel (other than diesel fuel offered, sold or supplied solely for use in locomotives or marine vessels) are also subject to this section to the extent required by section 93114, title 17, California Code of Regulations. As adopted, section 93114 requires each air pollution control or air quality management district by December 12, 2004, to treat this section 2282 as applying to California nonvehicular diesel fuel (other than diesel fuel offered, sold or supplied solely for use in locomotives or marine vessels) as if it were vehicular diesel fuel, and to enforce those requirements regarding California nonvehicular diesel fuel, unless the district has proposed its own airborne toxic control measure to reduce particulate emissions from diesel-fueled engines through standards for nonvehicular diesel fuel.

(B) Activities involving California nonvehicular diesel fuel used in harborcraft and most diesel-electric intrastate locomotives are also subject to this section 2282 as if the fuel were vehicular diesel fuel, to the extent required by section 2299, title 13, California Code of Regulations, and section 93116, title 17, California Code of Regulations. As adopted, these regulations make nonvehicular diesel fuel used in harborcraft in the South Coast Air Quality Management District subject to the requirements of this section 2282 starting January 1, 2006, and make all California nonvehicular diesel fuel used in harborcraft and most diesel-electric intrastate locomotives subject to this section 2282 starting January 1, 2007.

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NOTE: Authority cited: Sections 39600, 39601, 43013, 43018, and 43101 of the Health and Safety Code, and *Western Oil and Gas Ass'n. v. Orange County Air Pollution Control District*, 14 Cal. 3d 411, 121 Cal. Rptr. 249 (1975). Reference: Sections 39000, 39001, 39002, 39003, 39500, 39515, 39516, 41511, 43000, 43016, 43018, and 43101, Health and Safety Code, and *Western Oil and Gas Ass'n. v. Orange County Air Pollution Control District*, 14 Cal. 3d 411, 121 Cal. Rptr. 249 (1975).

5. Amend section 2284, title 13, California Code of Regulations, to read as follows:

§ 2284. Lubricity of Diesel Fuel

(a) *Regulatory Standard.*

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(6) *Applicability of standards to California nonvehicular diesel fuel.*

(A) Activities involving California nonvehicular diesel fuel (other than diesel fuel offered, sold or supplied solely for use in locomotives or marine vessels) are also subject to this section to the extent required by section 93114, title 17, California Code of Regulations. As adopted, section 93114 requires each air pollution control or air quality management district by December 12, 2004, to treat this section 2284 as

applying to California nonvehicular diesel fuel (other than diesel fuel offered, sold or supplied solely for use in locomotives or marine vessels) as if it were vehicular diesel fuel, and to enforce those requirements regarding California nonvehicular diesel fuel, unless the district has proposed its own airborne toxic control measure to reduce particulate emissions from diesel-fueled engines through standards for nonvehicular diesel fuel.

(B) Activities involving California nonvehicular diesel fuel used in harborcraft and most diesel-electric intrastate locomotives are also subject to this section 2284 as if the fuel were vehicular diesel fuel, to the extent required by section 2299, title 13, California Code of Regulations, and section 93116, title 17, California Code of Regulations. As adopted, these regulations make nonvehicular diesel fuel used in harborcraft in the South Coast Air Quality Management District subject to the requirements of this section 2284 starting January 1, 2006, and make all California nonvehicular diesel fuel used in harborcraft and most diesel-electric intrastate locomotives subject to this section 2284 starting January 1, 2007.

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NOTE: Authority cited: Sections 39600, 39601, 43013, 43018, and 43101 of the Health and Safety Code, and *Western Oil and Gas Ass'n. v. Orange County Air Pollution Control District*, 14 Cal. 3d 411, 121 Cal. Rptr. 249 (1975). Reference: Sections 39000, 39001, 39002, 39003, 39500, 39515, 39516, 41511, 43000, 43016, 43018, and 43101, Health and Safety Code, and *Western Oil and Gas Ass'n. v. Orange County Air Pollution Control District*, 14 Cal. 3d 411, 121 Cal. Rptr. 249 (1975).